

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT—EXHIBIT 6  
RICHARD CLARKE DEPOSITION (FEB. 1, 2018)

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF VIRGINIA  
3 ROANOKE DIVISION  
4

5 CLARENCE EDWARD WHITAKER,  
6 etc.,

7 Plaintiff,

CIVIL ACTION NO.

8 vs.

7:17-CV-55-GEC

9 HYUNDAI MOTOR COMPANY,  
10 et al.,

11 Defendants.  
12  
13

14 DEPOSITION OF RICHARD A. CLARKE

15 February 1, 2018

16 9:00 a.m.

17 Chateau Elan Inn

18 100 Rue Charlemagne Drive

19 Braselton, Georgia 30517  
20  
21

22 Judith L. Leitz Moran, RPR, RSA, CCR-B-2312  
23  
24

25 Job No. CS2797478

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19  
20 ALSO PRESENT:

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23  
24  
25

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(Pursuant to OCGA 15-14-37 (a) and (b) a written disclosure statement was submitted by the court reporter to all counsel present at the deposition.)

1                   RICHARD A. CLARKE,  
2   being first duly sworn, was examined as follows:

3                   THE WITNESS: I do.

4                   EXAMINATION

5   BY MR. SPENCER:

6           Q     Tell us your name, please.

7           A     Richard Clarke.

8           Q     Will you let me know if you don't  
9   understand my questions so I can rephrase it?

10          A     Certainly.

11          Q     What is the Plaintiff's name, the  
12   decedent's name?

13          A     Shannon Whitaker.

14          Q     Where did she work?

15          A     At I hospital somewhere in town.

16          Q     And what time did she leave the hospital  
17   on the day of the incident, if at all? Did she go  
18   to work that day?

19          A     Yes, she did.

20          Q     What time did she leave?

21                   You're pausing and looking for something.  
22   What is that you're looking for?

23          A     It's my report --

24          Q     Okay.

25          A     -- with the times I put in here. Well,

1 somewhere around about 4:45, I think, 5:00 time.

2 Q Where did she go then?

3 A She went home.

4 Q Did she make any stops along the way?

5 A Not that I'm aware of.

6 Q Well, are you aware one way or another  
7 whether she made any stops?

8 A I'm not.

9 Q Okay. Not that I'm aware of is another  
10 way of saying I don't know.

11 A Okay.

12 Q All right. So what time did she get  
13 home?

14 A I'm going to say approximately 5:10,  
15 somewhere around about that time.

16 Q How do you know that?

17 A Because Mr. Whitaker received a phone  
18 call from one of his sons at approximately 5:15.

19 Q All right. When Ms. Whitaker got home,  
20 how did she enter the ally? Which end of the ally  
21 did she enter from?

22 A I don't know that.

23 Q When she pulled into the parking area  
24 that was near her house which space did she pull  
25 into?

1           A     From the police reports, depositions I  
2     reviewed, and looking at the driveway, I would say  
3     the second position, that the first is in front of  
4     the house, the one to the right.

5           Q     And did you see any -- what did you see  
6     from your visit to the scene that lead you to  
7     believe that she was in the space to the right?

8           A     The way the driveway slopes and then the  
9     contact mark or the new siding on the building  
10    where the -- I guess the siding is replaced showing  
11    sort of a contact mark. She would have had to have  
12    been to the right of the home, maybe angled towards  
13    the house slightly.

14          Q     Well, both parking spaces are to the  
15    right of the home, aren't they?

16          A     A little bit, yeah.

17          Q     So this is a surmise on your part that  
18    she was in the space to the right based on what you  
19    saw at the scene?

20          A     Yes.

21          Q     All right. When she pulled into the  
22    space, what did she do?

23          A     From the material I've reviewed and  
24    statements, et cetera, would appear that she pulled  
25    into the driveway, switched the vehicle off, and



1     tried to exit the vehicle.

2           Q     What material that you've reviewed  
3     supports that conclusion?

4           A     The accident scene investigation report,  
5     police report.

6           Q     So the police report and what else?

7           A     I guess the death -- the whole report  
8     from the Pulaski Police Department.

9           Q     What is it in the Pulaski police report  
10    that supports the conclusion that when she pulled  
11    into the driveway she switched the vehicle off?

12          A     That the keys weren't found in the  
13    ignition, the engine wasn't running, there was no  
14    electronics on, for example, the radio wasn't  
15    playing. I don't believe anybody identified any  
16    audible chimes that would indicate that something  
17    was on or the key was in the ignition and the door  
18    was open.

19          Q     You're referring to the investigation  
20    that the police performed and the statements that  
21    were made by the police in their depositions about  
22    what they observed after the vehicle came to rest,  
23    correct?

24          A     Correct.

25          Q     But nobody really knows what the

1 condition of the vehicle was when Ms. Whitaker got  
2 out of it, true?

3 A Well, I think from what you can see at  
4 the scene, the keys weren't in the ignition, they  
5 were either found by her, by the door, or on the  
6 floor. So you'd have to take that into  
7 consideration that the key was extracted from the  
8 ignition.

9 Q Okay. But what evidence do you have that  
10 the key was extracted from the ignition before she  
11 got out of the car as opposed to some point between  
12 the point at which she got out of the car and the  
13 point which it came to rest?

14 A I don't have anything but that.

15 Q Right.

16 But she could just as easily have pulled  
17 the key out as the car was proceeding from the  
18 parking area to the house, true?

19 A Possibly.

20 Q Sure.

21 When she -- I noticed that when you were  
22 saying -- well, let me just confirm this.

23 When you say that she -- when she pulled  
24 into the parking space she turned the key off  
25 before she got out of the car, that's conjecture on

1 your part, isn't it?

2 A It's what people do. If you're going to  
3 exit the vehicle you switch the vehicle off.

4 Q Well, one thing people do is put the car  
5 in park, right?

6 A Agreed.

7 Q She didn't do that?

8 A I -- I mean, from the information I've  
9 seen and materials I reviewed, I would have to  
10 agree that it's quite possible it was not in park.

11 Q You don't know one way or another whether  
12 or not she put it in park?

13 A I don't.

14 Q You do know she never put on the parking  
15 brake?

16 A Again, from what I've read that would  
17 appear to be true.

18 Q And you in fact took some pretty good  
19 close up photographs of her parking brake pedal,  
20 didn't you?

21 A Yes.

22 Q To see if there were signs of wear on it,  
23 correct?

24 A Correct.

25 Q And there were some signs of wear on the

1 inboard lower corner of that pedal, correct?

2 A I believe so, yes.

3 Q Indicating that somebody had been using  
4 the parking brake at some point in the past?

5 A Yes.

6 Q But all evidence tells us that  
7 Ms. Whitaker chose not to use the parking brake --  
8 well, let me back up.

9 We don't know what she chose, all we know  
10 is she didn't engage the parking brake, correct?

11 A Yes.

12 Q What was Ms. Whitaker thinking as she  
13 pulled into the parking space?

14 MR. LOWE: Objection.

15 A I don't know what she was thinking.

16 BY MR. SPENCER:

17 Q Right.

18 Was she on her phone?

19 A Again, I don't know that.

20 Q Was she looking at her phone?

21 A I don't know that either.

22 Q When Ms. Whitaker pulled into the parking  
23 space, how long did she sit in the car, if at all,  
24 before she started the process of exiting it?

25 A That's not really what I was hired to do,

1     that's not my area. I was asked to look at the  
2     vehicle and determine if there was any kind of a  
3     problem with the vehicle. I wasn't asked to study  
4     Mrs. Whitaker's motions and factions that day, that  
5     would be more sort of a human factors kind of a  
6     question.

7             Q     And you're not a human factors expert?

8             A     I'm not.

9             Q     Right.

10            But you did -- or you were hired or you  
11     -- at least you did draw the conclusion that there  
12     was something about the vehicle that caused this  
13     incident, correct?

14            A     Yes.

15            Q     Well, and so that requires you to at  
16     least consider and rule out the possibility that  
17     Ms. Whitaker herself was responsible for it,  
18     correct?

19            A     I don't know what she did that day. I  
20     don't know if anybody knows. There was no  
21     witnesses to see what was going on. All I know is  
22     that somehow the vehicle was switched off in a  
23     drive gear and it rolled.

24            Q     And when she switched it off, whether she  
25     switched it off before it began to roll or after it

1 began to roll, you don't know as you told us?

2 A I don't.

3 Q Right.

4 And I think you've already established,  
5 if I'm repeating myself I apologize, but I think  
6 we've already established that you don't know  
7 whether Ms. Whitaker put the gear shift lever in  
8 park before she exited the vehicle, correct?

9 A Correct. But you have to look at what we  
10 found during our analysis. There is a way, if the  
11 key is out of the ignition and the vehicle is in  
12 park that the shifter can be moved.

13 Q Well, it depends on how you grab the  
14 shifter, correct?

15 A I think if you -- if you were reaching in  
16 for something, there's a high probability that you  
17 can get between the lever and the dash and knock it  
18 over and it will come out.

19 Q Have you ever seen anybody do that?

20 A I have not, no.

21 Q Right.

22 Now, you said there's a high probability.  
23 You were present when we did the experiments at  
24 McSwain Engineering, correct?

25 A Yes.

1           Q     You were present when we did the  
2     experiment where you pulled straight back on the  
3     gear shift lever, correct?

4           A     Correct.

5           Q     And it wouldn't budge?

6           A     Correct.

7           Q     And you were present when we did the  
8     experiment where we grabbed the gear shift lever  
9     with the string gauge and pulled it toward the  
10    direction of the open door, correct?

11          A     Correct.

12          Q     The direction that somebody might pull it  
13    in if they were reaching for something and -- while  
14    standing outside of the car and pulling it  
15    backwards, correct?

16               MR. LOWE: Objection.

17          A     Again, it's -- I'm not -- you know, I  
18    don't study occupant movement, but I mean if you  
19    were to move the gear lever away from you and there  
20    was a way to get it out of park --

21    BY MR. SPENCER:

22          Q     Right.

23          A     -- with very minimal force.

24          Q     The only way to get the gear shift, to  
25    force the gear shift lever out of park was to first

1 move the gear shift lever from park rest, the  
2 position where it normally sits, because of the  
3 force of the spring hard over to the right,  
4 correct?

5 A Yeah, pull the detent over to the right  
6 and then back.

7 Q And by detent you're talking about the  
8 gear shift lever?

9 A Correct.

10 Q All right. And when you -- when we  
11 pulled the gear shift lever from park rest to  
12 the -- to the right it met some resistance,  
13 correct?

14 A Yes, it did.

15 Q And you did an experiment when the gear  
16 shift lever was in that position being pulled to  
17 the right and it stopped after it met some  
18 resistance and at that position it was not possible  
19 to pull the gear shift lever all the way back, was  
20 it?

21 MR. LOWE: Objection.

22 A I don't remember exactly how Bill was  
23 doing it. I mean, I was in the back. I think I  
24 was photographing it or something.

25 Q Right.



1 But you were there watching?

2 A I was.

3 Q And you're aware also that the only time  
4 that anybody was able to pull the gear shift lever  
5 back out of park was to go beyond the point of  
6 resistance and force the gear shift lever all the  
7 way to the right?

8 MR. LOWE: Objection.

9 A I don't know if it's forcing it to the  
10 right, but it's pushing it to the right and pulling  
11 it back.

12 BY MR. SPENCER:

13 Q Well, sure you do, you were there, there  
14 was a strain gauge on it and they actually measured  
15 the force.

16 A It was about 12 pounds.

17 Q Yeah.

18 A 12.7 pounds.

19 Q Do you have any evidence that on the day  
20 of this incident just before Ms. Whitaker's vehicle  
21 started to move toward the house that she forced  
22 the gear shift lever over to the right with a force  
23 exceeding 12 pounds?

24 A I wasn't there that day so I don't know  
25 exactly what happened.

1           Q     Right. You don't know one way or the  
2 another whether she did that?

3           A     I do not.

4           Q     There's certainly no evidence that she  
5 did?

6           A     There's no evidence what she really did  
7 apart from switch the vehicle off and it rolled.

8           Q     Yes. Well, you keep saying that, but  
9 we've already established that we don't really know  
10 which came first, the rolling or the ignition being  
11 turned off, we've already established that, haven't  
12 we?

13          A     Right.

14          Q     Yeah. Okay.

15                Now, this vehicle is designed so that one  
16 cannot turn the key from run to off lock without  
17 the gear shift lever being in the park rest  
18 position, correct?

19          A     Correct.

20          Q     What is the name of the switch that is  
21 activated when the gear shift lever is in park  
22 rest?

23          A     Can you sort of clarify what you mean by  
24 switch.

25          Q     Well, what is it -- what device is it in

1 this vehicle that prevents the ignition cylinder  
2 from being turned to off lock unless the gear shift  
3 lever is in the park rest position?

4 A The terminology that I called it is the  
5 ignition interlock solenoid.

6 Q What is the terminology that Hyundai  
7 calls it?

8 A I wasn't able to do any -- find anything  
9 in literature that actually explains the actual  
10 name for that.

11 Q Yeah.

12 And nobody bothered to ask Hyundai for  
13 that either, did they, in the discovery?

14 A I don't know what was asked of the  
15 discovery.

16 Q That switch didn't become of interest to  
17 you until the first disassembly of this vehicle at  
18 your facility in Braselton when the fascia under  
19 the steering column was removed, correct?

20 A No, that first -- the first inspection  
21 that I did was -- was in Vinton and there was no  
22 destructive disassembly, but the second inspection  
23 was done in Alpharetta at Buckingham Automotive.

24 Q Right.

25 A Not Braselton.

1           Q     You're correct, I said Braselton, I  
2 apologize. So let me rephrase my question. Thank  
3 you for correcting that.

4                     This switch which you called a solenoid  
5 in your report did not become of interest to you  
6 until the first disassembly of the subject vehicle  
7 in Alpharetta, Georgia, when the fascia under the  
8 steering column was removed, correct?

9           A     That's correct.

10          Q     And that's when you saw that a connector  
11 was not connected, correct?

12          A     Correct.

13          Q     All right. Until that moment what was  
14 your theory of defect?

15          A     I didn't have a specific theory apart  
16 from that the key could be removed from the  
17 ignition locked in any position other than park.

18          Q     Why?

19          A     Again, that was what the disassembly was  
20 for and the destructive disassembly to investigate  
21 that kind of thing.

22          Q     Well, but that was long after the suit  
23 was filed.

24          A     I don't know when the suit was filed.

25          Q     And by that time you had already acquired

1 two steering columns, correct?

2 A Yes, we had done an '06 and an '07.

3 Q And by that time you had also removed the  
4 ignition cylinder from at least one of those  
5 steering columns, correct?

6 A Yes, I did.

7 Q Why?

8 A I was looking to see if there was any --  
9 or if there was a mechanical connection that would  
10 be allowing the key to turn back when the ignition  
11 system is off and the shifter is in a drive gear.

12 Q All right. And before you realized that  
13 the connector was no longer connected, you had  
14 taken detailed photographs as close up as you could  
15 of Ms. Whitaker's keys, correct?

16 A Correct.

17 Q And you had taken similar photographs of  
18 an ignition cylinder, correct?

19 A Correct.

20 Q Because your theory up until the moment  
21 you saw the connector was disconnected, was that  
22 there was something wrong with the ignition  
23 cylinder or the key or the combination thereof,  
24 correct?

25 A My theory at that point was, yes, there

1 had to have been something that was worn, broken,  
2 within the ignition lock assembly.

3 Q And that turned out to be wrong?

4 A Well, I would consider the interlock a  
5 part of that. It's a component and it works in  
6 conjunction with the ignition lock.

7 Q Well, but there's -- you're not aware of  
8 any defect within the ignition cylinder, are you?

9 A I am not.

10 Q The only problem that you're aware of  
11 with regard to the ignition system is that the  
12 switch that prevents the ignition cylinder from  
13 being turned to off lock, unless the gear shift  
14 lever is in the park rest position, was no longer  
15 connected, true?

16 A At that time of the inspection that is  
17 what we found, yes.

18 Q Right.

19 And you believe that that condition  
20 existed at the time that Ms. Whitaker's incident  
21 occurred?

22 A Correct.

23 Q When did it become disconnected?

24 A I could not even quantify when it became  
25 disconnected. It could have been when it was being

1 transported during -- after manufacturing to a  
2 dealership or an importer, it could have been when  
3 it was being driven away from the lot, it could  
4 have happened when they had that minor fender  
5 bender on the right side. There's, you know, 70  
6 some odd thousand miles of driving where -- and an  
7 improperly connected terminal can come apart.

8 Q Sure.

9 And it could have been disconnected by  
10 the people who put in the aftermarket radio?

11 A I don't disagree with that. I think  
12 there's a possibility that it could have been  
13 disconnected, but if it would have been correctly  
14 assembled at the point of manufacturing where the  
15 tongue had -- the bar that popped up behind the  
16 holding mechanism -- a tug on the wire during  
17 moving some harnesses to route the speaker  
18 microphone it should have never come undone.

19 Q Well, I don't understand what you're  
20 saying there. What are you trying to tell me?

21 A Well, if the connector, the female and  
22 male portion, the plastic pieces were latched  
23 together as they were designed to be somebody just  
24 working in the area casually should never have been  
25 able to pull them apart.

1 Q Do you know how the technician who put in  
2 the aftermarket radio pulled the connector apart?

3 A I don't believe he did pull the connector  
4 apart.

5 Q Well, how do you know that?

6 A From the analysis that I was aware of and  
7 observed at McSwain Engineering the male portion of  
8 the blade, the metal part, that inserts into the  
9 female portion that were inside the plastic  
10 housings, revealed that it wasn't fully inserted,  
11 it was only partially inserted.

12 Q You're basing that statement upon the two  
13 measurements that Mr. Carden, C-A-R-D-E-N, made  
14 during his inspection, correct?

15 A I don't know if he just made two  
16 measurements. I know there was some measurements  
17 made and I don't know how many.

18 Q How many photographs did he take?

19 A I do not have a clue.

20 Q How many did you take?

21 A I may have taken a half a dozen to a  
22 dozen of the connector.

23 Q How many measurements did Mr. Carden make  
24 of this?

25 A I do not know.



1           Q     How many measurements did you make of  
2     this?

3           A     I didn't make any measurements of the  
4     contact marks.

5           Q     Right.

6                     Did you see the tool marks on the outside  
7     of the male end of the connector?

8           A     Yes.

9           Q     And what did you make of those?

10          A     The only thing I can make of that and the  
11     only person I've observed working in the area prior  
12     to disassembly and analysis was Mr. Cooper when he  
13     was back probing it to check for voltage.

14          Q     Well, but he was back probing the female  
15     end of the connector, correct?

16          A     I don't know which end. I wasn't right  
17     underneath there when he was back probing.

18          Q     You photographed the connector before any  
19     probes were put on it, correct?

20          A     I photographed it as it was in the  
21     vehicle, but you couldn't get to the inside  
22     cavities, no.

23          Q     Well, but the tool marks I'm referring to  
24     are not on the inside cavities of the male  
25     connector, are they?

1           A     They're on the female connector.

2           Q     Well, let's clarify. When I'm referring  
3     to tool marks, I'm not referring to the marks that  
4     were left on the blades of the female connector  
5     when Mr. Cooper applied the volt -- the two prongs  
6     of the voltage meter.

7           A     Okay.

8           Q     I'm referring to the tool marks that are  
9     on the black plastic of the male connector.

10          A     I wasn't aware there was any tool marks  
11     on that.

12          Q     You didn't see that there were marks that  
13     were left on the black plastic of the male  
14     connector, specifically that portion of the black  
15     plastic that you would have to push down if you  
16     were going to release the connector?

17          A     I wasn't aware of that.

18          Q     You weren't there when microscopic images  
19     were taken of those at McSwain Engineering?

20          A     I think that we were sort of  
21     double-teaming. Some of us were working on one  
22     part and some of us were working on the shifter.

23          Q     Sure, it was a busy day. Couple of days  
24     actually.

25          A     It was, yes.

1 Q Yeah.

2 But you didn't notice that there were  
3 tool marks on the pin that you would have to press  
4 down to remove the male connector from the female  
5 connector?

6 A I did not.

7 Q Tool marks exactly of the sort that would  
8 be left if somebody putting in an aftermarket radio  
9 disconnected the male connector from the female  
10 connector?

11 MR. LOWE: Objection.

12 A Again, I never saw or observed any of  
13 those marks that you're talking about.

14 BY MR. SPENCER:

15 Q You don't deny they were present, you  
16 just don't know one way or the other?

17 A I never saw them so I don't know.

18 Q Okay. Great. Thanks. I just wanted to  
19 clarify that.

20 You weren't present when the person was  
21 doing the work on the aftermarket radio, were you?

22 A I was not.

23 Q And whether that person when he or she  
24 began his or her work found that the connectors  
25 were firmly latched together is something you don't

1 know?

2 MR. LOWE: Objection.

3 A I do not know.

4 BY MR. SPENCER:

5 Q Certainly possible?

6 MR. LOWE: Objection.

7 A Anything's possible.

8 BY MR. SPENCER:

9 Q Well, not anything's possible. I'm not  
10 going to give birth to a litter to piglets here,  
11 so, and neither is James. You might. But maybe  
12 not us guys.

13 But it is entirely possible that the  
14 person who put in the aftermarket radio found the  
15 connection in question to be firmly in place and he  
16 parted that connection, true?

17 MR. LOWE: Objection, calls for  
18 speculation. Not only about piglets, but about  
19 the --

20 BY MR. SPENCER:

21 Q That's true, though, isn't it?

22 MR. LOWE: -- work on the connector.

23 A I don't from my experience of working on  
24 vehicles and dealing with people who do aftermarket  
25 installations, they try to do the quickest way

1 possible because they're trying to get the job  
2 done. These kind of people may not even remove the  
3 lower bolster. They may have just gone up from  
4 underneath and threaded the wire over. I don't see  
5 any reason why they'd want to disconnect that  
6 connector for any reason to connect the radio up.

7 BY MR. SPENCER:

8 Q Well, and yet, you know from your own  
9 experience in life, that people often do things  
10 that others find mysterious or puzzling, correct?

11 MR. LOWE: Objection.

12 BY MR. SPENCER:

13 Q We have a President who's doing that.

14 MR. LOWE: No objection to that.

15 BY MR. SPENCER:

16 Q Don't we?

17 A Sometimes he says funny things, yeah.

18 Q Yes, he does. And sometimes people who  
19 are installing aftermarket radios do unfortunate  
20 things, don't they?

21 MR. LOWE: Objection.

22 A Well, I don't disagree with unfortunate  
23 things can happen, but I don't see the relevance  
24 why an installer would want to disconnect that  
25 particular part of the vehicle harness, because

1 he's not making a connection to the radio there.

2 He's making it behind the radio. So any

3 aftermarket connection should be done there. I

4 don't see why he would be in the area of it.

5 BY MR. SPENCER:

6 Q Well --

7 A I'm not saying he wasn't working in the  
8 area.

9 Q Right.

10 A But I don't see any reason why he'd want  
11 to physically disconnect that connector. It's not  
12 as if it's full-time 12 volts or a ground. It's  
13 not going to help him for the microphone wire and  
14 that's what he was running over there.

15 Q Did you ever run a microphone wire like  
16 that in a Santa Fe?

17 A Not in a Santa Fe, no.

18 Q Okay. Great.

19 But just to close out this discussion,  
20 you really don't know what the technician did or  
21 didn't do with that particular harness, do you?

22 A I was not there and I do not know.

23 Q Fair enough. All right.

24 MR. SPENCER: One second. We're talking  
25 behind your back.

1 BY MR. SPENCER:

2 Q You don't know when in the sequence of  
3 events Ms. Whitaker opened her door, correct?

4 A I don't.

5 Q And you don't know when in the sequence  
6 of events she put the gear shift lever into park,  
7 if at all, correct?

8 A Yeah, I didn't see anything in the  
9 investigation that would indicate that it was ever  
10 placed in park.

11 Q If you want a vehicle not to roll you  
12 should put it in park, correct?

13 MR. LOWE: Objection.

14 A That's what you should do.

15 BY MR. SPENCER:

16 Q Okay. And belt and suspenders, you  
17 should also activate the parking brake, correct?

18 MR. LOWE: Objection.

19 A I think it's written in the owner's  
20 manual when you park it to put it on, but I don't  
21 know if everybody uses the park brake, especially  
22 when they're in an automatic, when everybody  
23 assumes the park is the lock.

24 BY MR. SPENCER:

25 Q If Ms. Whitaker had put the gear shift

1 lever into park and left it in park, this car would  
2 not have rolled, correct?

3 A If she put it in park and exited the  
4 vehicle it shouldn't have rolled, that's correct.

5 Q It wouldn't have rolled?

6 A It shouldn't, no.

7 Q And it wouldn't have?

8 A If she -- yeah, it wouldn't, if she had  
9 exited the vehicle and walked away from it in park.

10 Q Right.

11 And if she had put it in park and applied  
12 the parking brake, it wouldn't have rolled,  
13 correct?

14 A Correct.

15 Q And you don't know whether this vehicle  
16 rolled under power or not, do you? Because you  
17 don't know when the engine was turned off, correct?

18 A I don't know when it was switched off,  
19 that's correct.

20 Q Right.

21 Now, you said the key was found either in  
22 her hand, in the car, or on the ground, did I hear  
23 you correctly?

24 A No, I think I said it was on the -- in my  
25 report I think I put it was on the floor on the



1 driver's side. And I read that in one of the  
2 statements or documents I reviewed. And then in  
3 Mr. Brown's, Corporal Brown's deposition, it was  
4 indicated in that that it was found on her person  
5 somewhere and on the floor by her by a hose pipe.

6 Q And where was her phone found?

7 A I do not know where they found the phone.

8 Q When you take -- when you provided to us  
9 your photos, did you rename them?

10 A No.

11 Q Because they have a name -- some of your  
12 photos have a name now CAC, which stands for Clarke  
13 Automotive Consultants, with a four-digit number  
14 after them.

15 A Correct.

16 Q But that's not the numbering that's  
17 placed by your camera as you're taking the  
18 pictures, is it?

19 A Yes, it would be, I'm sure.

20 Q The reason I'm asking is some of the  
21 photos appear to be out of order.

22 A They're out of order?

23 Q They appear to be. I'm just -- and, you  
24 know, I'm just trying to find out what your -- what  
25 you did, if anything, with the numbering of your

1 photographs. That's all I'm trying to find out.

2 A Oh, I don't do anything with the  
3 numbering. Whatever is on them is what's put onto  
4 the SIM card and when they're downloaded to the CD.

5 Q That number is put onto them on the SIM  
6 card by whom or by what?

7 A By the camera.

8 Q Well, did you use only one camera?

9 A Sometimes I use two. I use a Nikon what  
10 would be like an SLR camera. And then I have one  
11 of those little point and shoot cameras that has  
12 the ability to get into a smaller space.

13 Q I guess, the reason I'm wondering is that  
14 some of the pictures you have are designated DSC  
15 underscore and then some numbers and other  
16 photographs are CAC and then numbers.

17 Let me show you what I'm talking about,  
18 because I'm not trying to be mysterious here, it's  
19 just -- I'm just trying to understand what you did.

20 So let me show you some photographs that  
21 I got from you that are in a folder called  
22 160823-VI and SI. Do you see that?

23 A Yes.

24 Q And is that your naming convention?

25 A No.

1 Q Oh, interesting.

2 So if you look under Chip 1 it says

3 CAC1000 -- excuse me -- 10001, right?

4 A Yes.

5 Q Did I do that right, I can't see that

6 anymore?

7 A Yeah, it's 10001.

8 Q Okay. Great. Thanks.

9 And then if you -- but if you look at  
10 Chip 2 you see it says DSC\_0001, et cetera?

11 A Correct.

12 Q Do you see that?

13 A Correct.

14 Q I guess, I'm wondering why that is?

15 A The DSC -- let me look here. There's  
16 some on the log, it will have a DP number, and they  
17 were, I believe, maybe Bill Carden's when he was at  
18 my facility. There's the DP number right there.  
19 And I used some of those photographs in my report.

20 And then you were looking at -- the other  
21 ones should be at the beginning.

22 Yes. So I have the DSC photographs here,  
23 they were at the storage facility in Vinton that I  
24 took. And also I have the CAC ones that were on  
25 the same date.

1 I used two different cameras. One's a  
2 Nikon and one's a Gen 2 camera, it's a little point  
3 and shoot camera and it obviously has a DSC number  
4 on it. I don't think you can actually put initials  
5 of the company or anything else on it.

6 Q Yeah. I'm not aware of how you -- how  
7 you can program a camera to put the initials of a  
8 company on a photograph.

9 A The Nikons you can, you do it as a file  
10 number.

11 Q Oh, really?

12 A Uh-huh.

13 Q Okay. Before you do the pictures?

14 A Yeah, they do them by -- the professional  
15 bodies that we use you can -- you can go into the  
16 settings and determine -- you can change -- you can  
17 have the file number with a date in the right-hand  
18 corner, you don't have to have the date.

19 Q Okay.

20 A Or you don't have to have the file  
21 number, you can -- or use both.

22 Q Well, I'm a better person now because  
23 you've taught me that. Thank you.

24 A This little camera that I use is -- has a  
25 macro capability.

1 Q Okay.

2 A So it has ring flash around it, but it's  
3 only about this -- you know, it's about 5 inches  
4 long. So you can get up under the steering column  
5 like I did at this inspection and get close ups of  
6 the brake light switch.

7 Q All right. Thank you for explaining all  
8 of that.

9 A No problem.

10 Q The current theory that the connector may  
11 not have been seated correctly at the factory is  
12 based upon the belief that a mark on the -- on one  
13 of the subject connectors is shorter than a mark on  
14 the exemplar connector that Mr. Cooper had,  
15 correct?

16 A I know Mr. Cooper brought a connector  
17 with him that he was going to be using for testing  
18 I think at one of the inspections and he had no  
19 idea of where it came from and what the vehicle was  
20 or it was the same connector and the same color  
21 wires. But we also had obtained an '07 column that  
22 had that connector on it, too. So I do not know  
23 exactly which ones Mr. Carden performed his  
24 analysis on and what he's relying on. That you  
25 would have to ask him.

1 Q Well, you say which ones. You really  
2 don't even know if it's ones plural, do you?

3 A I don't know which -- whether I'm meaning  
4 ones, I mean, whether it's the Eddie Cooper pair or  
5 is it the exemplar pair from our '07.

6 Q Okay. You'd defer to Mr. Carden on that  
7 correct?

8 A Correct.

9 Q So your belief -- well, let me ask you.  
10 Do you have an independent belief of your own  
11 formed by your own analysis that the connector in  
12 question was not firmly seated at the factory?

13 A From the marks that I could see on the  
14 connector and when it's -- when you look at them  
15 together there appears to be a lot more of an  
16 insertion on the male side to the female when it's  
17 fully connected visually when you push them  
18 together then what it is when they're not fully  
19 latched.

20 Q Show me how you did that analysis if at  
21 all?

22 A I just -- I did it visually when I was  
23 looking at the connector.

24 Q Can you recreate that analysis with any  
25 of your photographs?

1           A     No, I don't have -- I didn't take any  
2     photographs. I was just doing a comparison with  
3     the exemplar that we had. And when I left, I  
4     think, that was Bill was going to then disassemble  
5     that and carry on with that analysis.

6           Q     Whose exemplar?

7           A     That would have been the one that we  
8     purchased.

9           Q     When? Not when you purchased it, but  
10    when you did the comparison you described?

11          A     It would have been before I left because  
12    I made it aware that we had a steering column -- I  
13    don't know if Bill knew it was there or not -- but  
14    I brought a spare steering column and an exemplary  
15    shift mechanism with the vehicle when I came down.

16          Q     On what date did you do the analysis  
17    where you compared the lengths of some marks?

18          A     I wouldn't say it was an analysis. I  
19    walked in there with Bill's assistant and I said,  
20    look, here, we've got a column, you can see when  
21    it's fully latched how far the two go together. If  
22    you only have a small amount of contact area and  
23    there's meant to be more engagement with the pin  
24    we're going to have to look at this and determine  
25    if fully engaged, is there more contact or if it's

1 partially engaged is there less contact, and that's  
2 how I left it with him.

3 Q On what date did you have that  
4 conversation?

5 A It would have been the last day.

6 Q Of what?

7 A Of the inspection at McSwain Engineering.

8 Q So it would have been on January 11th --

9 A Yes.

10 Q -- 2018?

11 A It would have been the second day of our  
12 two-day inspection.

13 Q Which was January 11, 2018, correct?

14 A Yes.

15 Q And just to close this out, you cannot  
16 using any of your photographs recreate the  
17 comparison that you say you did on January 11?

18 A It was a visual. We were just looking at  
19 it and discussing it and I said this is a -- this  
20 is one, we can photograph this when you're ready or  
21 you guys can chop the harness out like we did to  
22 the subject vehicle and if you have to do CT scans  
23 of it together, whatever you want to do, do it.  
24 You know, that's the -- that's a known good example  
25 of one that was fully latched.



1           Q     Okay. So what you did in this respect  
2     was simply to say, Bill, you can see that the male  
3     end is supposed to go into the female end, you  
4     should look at that and see if there's any  
5     indication of how far the male end was inserted  
6     into the female end of the subject connectors?

7           A     I don't know if it was Bill was there or  
8     it was his assistant, but it's one of the guys I  
9     spoke to about it when we went back there.

10          Q     And said essentially what I just  
11     described?

12          A     Correct.

13          Q     Got it.

14                 And you left it to them to actually do  
15     that?

16          A     Because at that point we still weren't a  
17     hundred percent sure if that was in fact -- that's  
18     what was happening. You have to perform this  
19     analysis and investigate it and determine what's  
20     going on. That's what we were doing.

21          Q     Well, in fact, you didn't do any analysis  
22     of those marks, you simply asked either Bill Carden  
23     or one of his people to do that analysis, correct?

24          A     Correct.

25          Q     And they reported to you that they did

1     that analysis, correct?

2           A     It was, yeah, during a conversation about  
3     the time the reports were having to be done they  
4     said that they had found the contact marks and that  
5     they were pretty sure that the connection wasn't  
6     fully latched.

7           Q     Who said that?

8           A     I think it might have been Bill.

9           Q     You think it might have been Bill. Who  
10    else might it have been?

11          A     I don't -- I don't think it was anybody  
12    else. I don't remember from anyone saying, but it  
13    mostly was Bill.

14          Q     How sure is pretty sure?

15          A     99.9 percent?

16          Q     Well, you said that with a question mark  
17    at the end and that's because you really don't know  
18    what he meant by pretty sure, correct? All you  
19    know is he said pretty sure?

20          A     Right.

21          Q     Okay. Fair enough.

22                 So you haven't yourself drawn the  
23    conclusion that any marks on the subject connector  
24    are shorter than any corresponding marks on any  
25    other connector, true?

1 A True.

2 Q Now, we talked about Mr. Coopers  
3 exemplar, correct?

4 A Yes.

5 Q Mr. Cooper was pretty clear that one  
6 shouldn't draw any conclusions from his exemplar,  
7 correct?

8 A He was adamant about that, yes, sir.

9 Q Right.  
10 Because he didn't know the providence of  
11 the connectors, correct?

12 A Correct.

13 Q He didn't even know if the -- those  
14 connectors were -- originally made it in the same  
15 vehicle, they may have been from two different  
16 vehicles, correct?

17 A Correct.

18 Q But what Mr. Cooper also said is that he  
19 had cycled those connectors, connected them,  
20 disconnected them, connected them, disconnected  
21 them, many, many times, correct?

22 A He did.

23 Q Right.

24 And that's part of the reason he said,  
25 guys, don't draw any conclusions from my connectors

1 because we don't know their history except that  
2 I've been messing with them for a long time,  
3 correct?

4 A Correct.

5 Q Right.

6 MR. SPENCER: How is everybody doing?

7 MR. LOWE: You doing all right?

8 THE WITNESS: I'm fine.

9 MR. SPENCER: Great, okay.

10 Let's go ahead and mark your report as  
11 Exhibit 1.

12 (Deposition Exhibit 01 marked.)

13 BY MR. SPENCER:

14 Q And Mr. Clarke, what I want to do here,  
15 just so you -- well, first, take a look at that and  
16 make sure it's complete, okay?

17 A Looks complete.

18 Q Okay, thank you. That's Exhibit 1.

19 Now, we've exchanged photographs and --  
20 but you brought a couple of binders here. And I  
21 want to make sure that I have a complete record of  
22 everything that you've done.

23 What do you think is the best way for me  
24 to do that?

25 A Well, these -- these -- the photographs

1 are the only photographs that we have. So you have  
2 all of those photographs.

3 Q All right. So to the extent that there  
4 are any photographs in your binders I've already  
5 got those?

6 A That's correct. And then there is a  
7 thumb drive or a jump drive right here that was  
8 from McSwain Engineering and that is Bill Carden's  
9 photographs that he took.

10 Q Is that an extra thumb drive?

11 A It's a -- yeah, it's just --

12 MR. SPENCER: I guess what I'm wondering  
13 is, can I get that marked and leave it with the  
14 court reporter? Do you care?

15 MR. LOWE: I have no objection.

16 A It was given to us by McSwain Engineering  
17 or sent to us.

18 MR. LOWE: And you reviewed them?

19 THE WITNESS: Yeah, and I had them  
20 printed out, too. They're right here, this  
21 (indicating).

22 MR. SPENCER: Okay. Well, let's --

23 THE WITNESS: You can look at them on  
24 your computer if you want to.

25 MR. SPENCER: Let's go off the record

1 real quick.

2 (Off the record.)

3 MR. SPENCER: Let's go back on.

4 BY MR. SPENCER:

5 Q So Mr. Clarke, you brought with you two  
6 binders. Do these two binders comprise your entire  
7 file concerning this matter?

8 A Yes.

9 Q All right. And I notice that the number  
10 that you used for this case is R-1128. Does that  
11 mean that this is the 1128th case that you've had?

12 A No, that is the number of this case, but  
13 it doesn't mean that that's all I've ever done. We  
14 had another version of it when I first started that  
15 was like an RAC or a CAC number and then we started  
16 to do with the R number for my first name initials  
17 just to make it easier for tracking.

18 Q Okay. But you do number your cases  
19 consecutive?

20 A Yes.

21 Q So this is the 1128th case that you've  
22 had since you've been using the R to designate your  
23 cases?

24 A Correct.

25 Q Got it.

1           Looking at the -- at the first of the two  
2 binders. I see that there is a thumb drive in here  
3 and what is that thumb -- it says Whitaker  
4 Inspection on it. And what is that thumb drive?

5           A     That say video taken of me doing four  
6 demonstrations of the subject vehicle in Vinton,  
7 Virginia.

8           Q     And that -- those are the demonstrations  
9 that are mentioned in your notes, correct?

10          A     Correct.

11          Q     Let me just take a moment to -- do you  
12 mind if I look at those videos real quick?

13          A     No problem at all.

14          Q     Thank you.

15               MR. SPENCER: James, if you want to come  
16 look at them, that's fine with me.

17               MR. LOWE: I've seen them.

18               MR. SPENCER: Okay.

19               MR. LOWE: I was there.

20               MR. SPENCER: Oh, you were?

21               MR. LOWE: Uh-huh. But I'm not subject  
22 to being deposed about it.

23               MR. SPENCER: Well, we can just chat.

24               MR. LOWE: Sure we can.

25               THE COURT REPORTER: Should this be off

1 the record?

2 MR. SPENCER: No, let's stay on the  
3 record while we chat.

4 (Off the record discussions.)

5 MR. SPENCER: All right. So I'm opening  
6 this thumb drive and it says Whitaker Inspection  
7 Videos, Date Modified 8/29/2016, 3:46 p.m. And  
8 there are four videos that are entitled P8230001,  
9 then 2, and 3, and then 4.

10 So let's look at 1. Oh, 1 is just a  
11 picture of your foot or somebody's foot.

12 THE WITNESS: Yeah, that was a -- I think  
13 that was a boo boo on somebody's part, as they say.

14 MR. SPENCER: Spielberg you're not, so.

15 THE WITNESS: That wasn't me. I wasn't  
16 doing the videoing.

17 MR. SPENCER: Okay.

18 BY MR. SPENCER:

19 Q So this is Video No. 2. Let's see.

20 (Whereupon, Video No. 2 began being  
21 played, as follows:)

22 "CLARKE: I'm using the known set of keys  
23 as the primary set of keys. That would be white  
24 key Fob logo with Shelor Motor Mile, MM. I'm going  
25 to insert the key into the ignition switch and try



1 to attempt to shift out of park. Unable to. Press  
2 the brake pedal, turn the key to accessory. Unable  
3 to. Press. Unable to. In the run position the  
4 PRNDL in the dash indicates P. We're in P. Unable  
5 to shift from park depressing the brake pedal.  
6 Shifting into reverse. We're in reverse. PRNDL  
7 indicates reverse. Neutral. Drive. And then over  
8 for your manual shift. Back into drive, take it  
9 off brake, into neutral. Unable to shift into  
10 neutral. PRNDL indicates neutral. Depress brake  
11 pedal, put it into reverse, go off brake, you can  
12 shift it into reverse. Turn key off. Remove key.  
13 Unable to remove it from park. Reinsert key, turn  
14 to the run position, depress brake pedal, select  
15 drive, attempt to turn the key off, key can be  
16 removed in the drive position. Selected neutral,  
17 unable to pass the neutral gate. Ignition back on.  
18 PRNDL indicates neutral. Depress brake pedal into  
19 reverse, into park, key off, unable to come out of  
20 park. Ignition back on" --

21 Let me just pause it right there and I'm  
22 pausing at 3 minutes and 22 seconds into the video.  
23 And again, the video is P8230002.

24 Am I correct that during your conclusion  
25 during this inspection was that the BTSI, the

1 B-T-S-I, was working properly?

2 A Yes.

3 Q All right. And the stop latch switch was  
4 working properly?

5 A Yes.

6 Q We found on January 11, 2018, the second  
7 day of our session at McSwain Engineering that a  
8 piece of a pawl, P-A-W-L, on the BTSI had been  
9 broken off, correct?

10 A Yeah, there was a piece of that fulcrum  
11 arm, the corner was missing.

12 Q And that piece is what prevents one from  
13 moving the gear shift lever out of park to another  
14 gear position unless the ignition cylinder is in  
15 the run position and the foot is on the brake,  
16 correct?

17 A Correct.

18 Q When was that piece broken off?

19 A I have no idea.

20 Q It was probably while the vehicle was at  
21 McSwain Engineering, correct?

22 A No, because I -- as a formality when I'm  
23 doing my analysis whether it's on a shifter on the  
24 column or in the center on the floor, I always give  
25 it a tug to make sure that it doesn't come out.

1 And I think one of the next videos is -- I just  
2 pushed it over and it came out and that was the  
3 first time it ever happened to me.

4 Q But that's -- that may not have been the  
5 time when the piece actually broke off, correct?

6 A Yeah, I don't know when it broke off, but  
7 I mean if the BTSI, if the angle in the arm is  
8 correct and it's not broken, it shouldn't come out  
9 of park.

10 Q Do you know whether anybody was able to  
11 force -- forcefully overcome the BTSI before you  
12 did it on August 23rd, 2016?

13 A I don't know if anybody tried that.

14 Q Do you know how many times people  
15 forcefully overcame the BTSI between the time you  
16 first did it on August 23, 2016, and the time when  
17 we left McSwain -- the time when we found the  
18 broken piece on January 11, 2018, at McSwain  
19 Engineering?

20 A I don't know.

21 Q Do you have an estimate for the minimum  
22 number of times that it was forced out of that  
23 position?

24 A The only -- every time I've done it it's  
25 been documented. So it was documented I think

1 twice at that inspection.

2 Q Okay.

3 A And then when we documented it, whenever  
4 the last documentation was done on it.

5 Q January 11. As far as I know, anyway.

6 A Yeah, I mean that -- I don't do any  
7 testing without videoing, you know, or not testing  
8 as they say, but, you know, documentation.

9 Q Understand.

10 I'm playing the video again.

11 (Whereupon, Video No. 2 began being  
12 played, as follows:)

13 "CLARKE: Put the PRNDL in reverse,  
14 attempt to remove key in reverse. Can remove the  
15 key in reverse. Move the shifter back and into  
16 drive. Tried to get it out of neutral, the neutral  
17 gate is holding it. Key back on, PRNDL indicates  
18 neutral, shift into park, ignition on, unable to  
19 remove from park. Take the key out of ignition,  
20 unable to remove from park. This would be primary  
21 set of keys.

22 "I'm now going to use what's been  
23 identified as the second set of keys that has the  
24 blue key Fob."

25 That has the blue key FOB. I'm stopping

1 it right there at 4 minutes and 22 seconds.

2 Mr. Clarke, is it fair to say that you  
3 did essentially the same thing with the blue set of  
4 keys that you did with the white set of keys?

5 A Yes, sir.

6 Q And that would be the rest of this video,  
7 correct?

8 A Yes.

9 Q All right. Well, I'm going to not play  
10 the rest of this video just in the interest of  
11 time.

12 I want to look at -- whoops, hold on one  
13 second, I clicked the wrong one. Stop.

14 Okay. Let's look at P8230003.

15 Want to look at yours notes?

16 A I just -- I wrote down exactly what we're  
17 doing.

18 (Whereupon, Video No 3 began being  
19 played, as follows:)

20 Q "CLARKE: All right. This is the primary  
21 set of keys. And insert the key in the ignition,  
22 unable to get it out of park. Put it into run,  
23 depress the brake pedal, put it into neutral, into  
24 drive, PRNDL's in drive, in drive in the selector.  
25 Put it into park, foot off the brake, PRNDL

1 indicates park. Turn the key off, extract the key  
2 in drive. Extract the key, in drive."

3 How do you figure that happened?

4 A It was a surprise to me. I didn't  
5 anticipate it to do that either. I don't know what  
6 happened. It just -- it bypassed, all of that  
7 piece was already off then, because it didn't take  
8 nothing, it didn't crack, it didn't click, it just  
9 came out.

10 Q Well, I'm kind of struck by how casual  
11 that movement was. It wasn't -- and again this is  
12 on the Video No. 3, it looks like you kind of  
13 expected that to happen?

14 A No, we didn't. I didn't. That's the  
15 last thing I expected.

16 Q Do you have an explanation for why that  
17 happened apart from the possibility that the piece  
18 of the pawl had broken off?

19 A That would be from -- I thought, you  
20 know, there's something wrong with the mechanism  
21 and I'm familiar with them being of a plastic  
22 polymer design.

23 Q Uh-huh.

24 A And I've had other systems similar to  
25 that that have had a similar failure mode. And I

1 believe they were just deformed or distorted in the  
2 molding or when they manufacture it. So that was  
3 one theory is maybe it followed one of the other  
4 cases that I had had. And then the other thing is  
5 obviously something was broken.

6 Q Have you ever been able to replicate what  
7 we see in the third video from August 23, 2016,  
8 since?

9 A The time we replicated it I think was --  
10 would have been -- the next video shows me just  
11 assuming that somebody would put their hand between  
12 the shifter and the dash and it comes out again  
13 with ease.

14 And the next time it was pulled out would  
15 have been at McSwain Engineering.

16 Q And the time at McSwain Engineering was  
17 documented upon video with the strain gauge,  
18 correct?

19 A Correct.

20 Q All right. Let's look at the next video.  
21 And the next video is P8230004.

22 (Whereupon, Video No. 4 began being  
23 played, as follows:)

24 "CLARKE: I insert the primary keys into  
25 the ignition switch, unable to shift from park.

1 Unable to shift from park. Key in the run  
2 position. The PRNDL in the dash indicates P or in  
3 P. Press the brake pedal, select neutral, move it  
4 back into the park position, brake off, remove key,  
5 exit vehicle and reach in as if to grab for  
6 something in front of the lever. As if to grab for  
7 something in front of the lever."

8 Do you have any evidence that  
9 Ms. Whitaker was somehow trapped by the vehicle as  
10 it was rolling toward the point of rest?

11 A I think the thing that leads me to  
12 believe she was interacting with the vehicle was  
13 the grass stains on her knees that were on her  
14 pants that she was wearing where she might have  
15 been dragged with the vehicle.

16 Q But whether she was dragged because she  
17 was holding on to the vehicle and trying to stop it  
18 or was somehow trapped by the vehicle on the way to  
19 the point of rest, you don't know, correct?

20 A I don't know, but I think the logical  
21 thing for people to do would be to try to stop the  
22 vehicle somehow, whether to try and get back in it  
23 and put their foot on the brake or try to attempt  
24 to put it in park if she realized it was out of  
25 park at that time.



1           Q     Your conjecture is that she was probably  
2     running with or holding onto the vehicle in an  
3     attempt to stop it, correct?

4           MR. LOWE:  Objection.

5           A     That's a theory, yes.

6     BY MR. SPENCER:

7           Q     Okay.

8           A     But again nobody was there, nobody  
9     witnessed it, all we know is how it finished up at  
10    rest.

11          Q     All right.  So what I'm going to do is  
12    I'm going to save your -- or a copy of Whitaker  
13    Inspection Videos on a folder that I'm going to  
14    call Clarke Deposition Exhibits.

15          MR. SPENCER:  James, I'm going to try to  
16    get through this as quickly as I can.

17          MR. LOWE:  Oh, you're doing fine.

18          MR. SPENCER:  So you can make an earlier  
19    flight.  These things just take time, there's no  
20    way around it, so.

21          MR. LOWE:  Yeah, of course, take your  
22    time.  Are you done?

23          MR. SPENCER:  I'm trying to -- I'm trying  
24    to get there.

25          THE WITNESS:  He wants to get back to the

1 sun where it's warm.

2 MR. SPENCER: I've been fighting a cold.

3 It's been --

4 MR. LOWE: No kidding.

5 THE WITNESS: Me, too, for two weeks.

6 MR. SPENCER: Me, too.

7 THE WITNESS: It's been really bad.

8 MR. SPENCER: What the heck. I think you  
9 got -- you made me sick when we were --

10 THE WITNESS: No, you gave it to me.

11 (Off the record discussions.)

12 MR. SPENCER: Let's go back on.

13 Let's go on and mark this thumb drive  
14 that we've been discussing as Clarke Exhibit 2.

15 (Deposition Exhibit 02 marked.)

16 BY MR. SPENCER:

17 Q You've also given me a thumb drive that  
18 says M1390BC/Lowe Photos & Videos, November 8,  
19 2017. And this is from McSwain Engineering because  
20 it's got their little logo on it, right?

21 A Yes.

22 Q And what is on this thumb drive generally  
23 speaking?

24 A As far as I know there's just the  
25 photographs from the analysis on that date, I'm

1 assuming.

2 MR. SPENCER: I'm going to copy that to  
3 my little folder.

4 MR. LOWE: Off the record.

5 (Off the record discussions.)

6 MR. SPENCER: Let's go back on.

7 BY MR. SPENCER:

8 Q So I've copied the whole folder over from  
9 this thumb drive and it's called -- the folder name  
10 is called M1390PHOTO, call caps. I'm going to  
11 remove that thumb drive from my computer and we  
12 will mark the thumb drive that we've just been  
13 discussing as Clarke Exhibit 3.

14 (Deposition Exhibit 03 marked.)

15 BY MR. SPENCER:

16 Q And going through your binder there's a  
17 folder here called Notes and it contains, I don't  
18 know how many pages, but there are notes from  
19 March 17, 2016; August 23, 2016; September 22 of  
20 2016; October 6th, 2016; July 27, 2017; February  
21 11 -- excuse me, sorry. That was wrong. August 8,  
22 2017 is the next date. October 4, 2017, is the  
23 date after that. And then October 26, 2017. And  
24 November 8, 2017. And January 1, 2018. And  
25 January 11, 2018. Correct?

1 A Correct.

2 Q All right. It's exciting stuff, isn't  
3 it?

4 MR. SPENCER: So let's mark your notes as  
5 Exhibit 4.

6 (Deposition Exhibit 04 marked.)

7 MR. SPENCER: And I'm going to put that  
8 on the page divider.

9 THE WITNESS: That's fine.

10 MR. SPENCER: Can you make those copies?

11 THE WITNESS: Yes.

12 MR. SPENCER: All right. If you would do  
13 that that would be great.

14 MR. LOWE: For both of us, please.

15 THE WITNESS: Sure.

16 BY MR. SPENCER:

17 Q And then we have your contract, which I  
18 have. Your list of publications, which I have.  
19 Your list of depositions which -- that you've given  
20 in the last four years, which I have. Your list of  
21 trial testimony, which I have.

22 Then we have your bills.

23 A I think that's Miscellaneous right there,  
24 isn't it?

25 Q Yes, it's called Miscellaneous and we'll

1 mark that as Exhibit 5.

2 (Deposition Exhibit 05 marked.)

3 BY MR. SPENCER:

4 Q And Exhibit 5 is all the documentation in  
5 the miscellaneous -- after the Miscellaneous tab.

6 And then we have correspondence and we'll  
7 mark that as Exhibit 6.

8 (Deposition Exhibit 06 marked.)

9 BY MR. SPENCER:

10 Q Okay. Correspondence is Exhibit 6.

11 Hyundai docs is another folder which is  
12 Exhibit 7.

13 (Deposition Exhibit 07 marked.)

14 BY MR. SPENCER:

15 Q Protocol I'm going to skip.

16 And Service Bull/Recalls is Exhibit 7.

17 MR. LOWE: 8.

18 THE WITNESS: 8.

19 MR. SPENCER: Excuse me, Exhibit 8. I  
20 apologize. Thank you. Gosh, y'all, back off.  
21 Jumping on me.

22 (Deposition Exhibit 08 marked.)

23 BY MR. SPENCER:

24 Q CarFax is Exhibit 9.

25 (Deposition Exhibit 09 marked.)

1 MR. SPENCER: Did I get that right?

2 MR. LOWE: We'll let you know if you mess  
3 up.

4 MR. SPENCER: Y'all are hard-asses.

5 BY MR. SPENCER:

6 Q Exhibit 10 is Web Search.

7 (Deposition Exhibit 10 marked.)

8 BY MR. SPENCER:

9 Q And Exhibit 11 is your Invoices file --  
10 tab.

11 (Deposition Exhibit 11 marked.)

12 MR. SPENCER: And we've agreed that  
13 Mr. Clarke is going to make copies of those things  
14 for us. And if you would do color to color that  
15 would be great.

16 THE WITNESS: Okay.

17 MR. SPENCER: And I'm frankly fine if you  
18 just want to scan them and send them to us that  
19 way, that'd be great.

20 THE WITNESS: Okay. Electronically.

21 MR. SPENCER: Yeah, sure.

22 MR. LOWE: This isn't a lot to send in an  
23 email.

24 MR. SPENCER: Yeah. Send them to James,  
25 to me, and to the court reporter, please. Then

1 she'll have the -- and she can put the originals  
2 with the file.

3 And I'm fine if you just want to give us  
4 these things on electronic media, too.

5 BY MR. SPENCER:

6 Q All right. So then turning to your  
7 photograph folder. We have something called Photos  
8 by Others and there are two photographs. Do you  
9 know who took those?

10 A I do not.

11 MR. SPENCER: Well, let's mark them as  
12 Exhibit 12 regardless.

13 And if you have these electronically we'd  
14 like to receive them in that fashion, please.

15 (Deposition Exhibit 12 marked.)

16 THE WITNESS: Okay.

17 BY MR. SPENCER:

18 Q Then the next is entitled Exemplar Photo,  
19 that's what the folder name is, and these are  
20 photos called DP-E0001 to DP-E0102. And they were  
21 all taken on October 25, 2017, am I correct?

22 A That's the -- is that what the photos are  
23 dated?

24 Q Yeah.

25 A Yeah.

1 Q And whose are these?

2 A I think they're Bill Carden's, I believe,  
3 because he reviewed the vehicle with me on 10/25.  
4 So there should be some pictures of the exemplar  
5 shifter there.

6 MR. SPENCER: All right. We'll mark  
7 those as Exhibit 13 simply because I don't think I  
8 have those yet. I'm not saying I don't, I'm just  
9 saying I don't recognize them.

10 (Deposition Exhibit 13 marked.)

11 MR. SPENCER: Exhibit 13 are the photos  
12 that I just described DP-E0001 through 102 dated  
13 October 25, 2017.

14 MR. LOWE: And you should have those in  
15 McSwain's production.

16 MR. SPENCER: And I may very well, I just  
17 don't know.

18 BY MR. SPENCER:

19 Q The next is a series of photos that are  
20 marked DP-0001 to DP-0379. And those were also  
21 taken October 25, 2017. Who's are these?

22 A That would be, I think, McSwain's again  
23 or Bill Carden's.

24 MR. SPENCER: Let me see something real  
25 quick. I don't have these yet. At least according



1 to my records.

2 MR. LOWE: Okay. You should.

3 MR. SPENCER: Well, you know, look, these  
4 things happen. And I may in fact have them, I just  
5 don't know.

6 MR. LOWE: Okay. You want to include  
7 those in Exhibit 13 or did you want to mark them  
8 separately.

9 MR. SPENCER: Let's mark them as 14.

10 (Deposition Exhibit 14 marked.)

11 MR. SPENCER: And if we could have those  
12 electronically that would be great.

13 BY MR. SPENCER:

14 Q The next divider is called Photo dash --  
15 excuse me -- Photo/CD and this is a set of  
16 photographs from your inspection of August 23,  
17 2016, and these are photographs DSC\_0001 to  
18 DSC\_0053. And these appear to have been done by  
19 you while the vehicle was still in Virginia,  
20 correct?

21 A Correct.

22 Q And I know we have those so I'm not going  
23 to mark those.

24 Then there's another series behind the  
25 same divider that is marked and these are photos

1 that were also taken on August 23, 2016, and these  
2 are CAC10001 to CAC10122. Those are pictures taken  
3 by you, again, while the vehicle was in Virginia,  
4 correct?

5 A Correct.

6 Q And I know I have those so I'm not going  
7 to copy those again.

8 The next divider is your photos that were  
9 taken -- or excuse me -- yes, photos taken by you  
10 on September 22, 2016. And I don't have those for  
11 whatever reason.

12 A That's the exemplar shifter, was it not,  
13 in 2016?

14 Q It's November 22, 2016.

15 MR. LOWE: November 22?

16 MR. SPENCER: I'm sorry, I'm screwing up.  
17 I apologize. Let me start over.

18 BY MR. SPENCER:

19 Q It's September 22, 2016, okay? I  
20 apologize. And these are pictures called CAC1002  
21 to CAC -- I'm losing my mind. Let me -- okay. I'm  
22 going to start over again.

23 There are photographs taken September 22,  
24 2016, and they're marked CAC10002 -- excuse me --  
25 10001 to 10029. And I don't have those so I'd like

1 for these to be marked as Exhibit 15.

2 (Deposition Exhibit 15 marked.)

3 BY MR. SPENCER:

4 Q The next series of photographs was taken  
5 on July 27, 2017. And these photographs were  
6 marked CAC10001 to CAC10037.

7 And then there are after that a series of  
8 photographs called Snapshot\_170727 - 070041. And  
9 then the next one is 070127. Then we have 070145,  
10 070228, 070247, 070322, 070345, 070418, 070438, and  
11 these are all snapshots that were taken by  
12 Mr. Webster from his computer when he was doing the  
13 download, correct?

14 A Yeah, they were pictures that were taken  
15 during that inspection.

16 Q Right.

17 I have everything behind that tab so I'm  
18 not going to mark it.

19 The next thing we have are photographs  
20 that were taken on August 8, 2017, and these are  
21 also marked CAC10001 to CAC10030. We have those so  
22 I'm not going to mark those, okay?

23 Next we have photographs that were taken  
24 on October 3, 2017, and these are photos that are  
25 of the exemplar vehicle and they are P102073 to

1 P102082. And what are these?

2 A They were -- I think that's the '07 Santa  
3 Fe where we removed the '07 steering column and  
4 shifter.

5 MR. SPENCER: We'll mark those as  
6 Exhibit 16.

7 (Deposition Exhibit 16 marked.)

8 BY MR. SPENCER:

9 Q By the way, let me digress for a moment.  
10 I saw in your notes that the first steering column  
11 that you got from a 2006 model year vehicle was not  
12 the same as the one in the subject vehicle. Do you  
13 know why that is?

14 A It's using a different mechanism is all.  
15 I don't think it's got a cable mechanism that  
16 controls removing the key when it's in park. It's  
17 a link, mechanical link between the shifter and the  
18 column.

19 Q Okay. Just a different design?

20 A It is.

21 Q To accomplish the same thing, right?

22 A Yes, sir.

23 Q Okay. Great.

24 And then we have a series of photographs  
25 that was taken on October 4, 2017, and these are

1 marked CAC10001 through 10015. And I know I have  
2 those so I'm not going to mark them.

3 Then we have a series of photographs  
4 taken October 26th, 2017, of the subject vehicle  
5 and these are marked CAC10001 to CAC10002, and I  
6 know I had -- excuse me, let me back up.

7 They're dated October 26th, 2017, they're  
8 marked CAC10001 to CAC10117. And I know I've seen  
9 these so I'm not going to mark them.

10 But looking at the last page of this, can  
11 you tell from this picture whether the end of the  
12 pawl is broken off in these photographs?

13 MR. LOWE: Can you hand it to him?

14 MR. SPENCER: Sure.

15 A Yes, it appears that the corner piece is  
16 missing up there. One of the edges is fractured  
17 off for some reason.

18 BY MR. SPENCER:

19 Q So it looks as though you did a partial  
20 disassembly of the center console, correct?

21 A Yes.

22 Q And peered in, correct?

23 A Yes, sir.

24 Q And documented those things that are seen  
25 in the photographs, correct?

1           A       Correct.

2                   MR. LOWE:   Would it be all right if we  
3 stipulated that that was at a joint inspection?

4                   MR. SPENCER:   I know we were there for at  
5 least part of it.   I don't know if we were there  
6 for the whole thing of that.   I just don't  
7 remember.   Because I don't remember ever looking at  
8 the locking pawl at that point.

9           A       That was the first time that, you know,  
10 we all looked at it with Bill Carden together.  
11 That was that day at Buckingham Automotive, October  
12 26th.

13                   MR. LOWE:   Right.   With Gary Webster and  
14 you and Eddie Cooper all there.

15                   MR. SPENCER:   And you were there.

16                   MR. LOWE:   And I was there.

17                   MR. SPENCER:   Yep.

18                   MR. LOWE:   That's why I thought we could  
19 stipulate because you were also there.

20                   MR. SPENCER:   You did this, didn't you?

21                   MR. LOWE:   Yes, I, and the A team.

22       BY MR. SPENCER:

23           Q       Okay.   All right.   So the next series of  
24 photographs is dated November 8, 2017.   And that is  
25 a series of photographs with the markings on them

1 CAC10001 to CAC10038. And I have those so I'm not  
2 going to mark them.

3 And the next series of photographs is  
4 marked 1-10, 1-11. And these are photographs taken  
5 on January 10 and 11, 2018. And they are numbered  
6 DSC\_0001 to DSC\_0037. And then CAC1001 to -- I  
7 said 1001 -- I meant 10001 -- to CAC10117.

8 And then there's a second set of  
9 photographs that was taken on January 11, 2018, and  
10 these are marked CAC10001 through CAC10061.

11 Correct?

12 A Correct.

13 Q All right. And that's your whole file,  
14 correct?

15 A It is.

16 Q Great. Thank you.

17 MR. SPENCER: Let's take just a couple of  
18 minutes break and then I'll start trying to wrap  
19 up.

20 (Recess taken 10:37 - 10:46 a.m.)

21 MR. SPENCER: We're going to bounce  
22 around here a little bit. That's because I'm in  
23 clean-up mode.

24 BY MR. SPENCER:

25 Q Were you able to determine whether or not

1 the fascia under the steering column had ever been  
2 removed before our joint inspection on October  
3 26th, 2017?

4 A I was not, no.

5 Q Okay. You evaluated the grade of the  
6 parking area at Ms. Whitaker's home; is that  
7 correct?

8 A Yeah. The accident scene?

9 Q Correct.

10 A Yes.

11 Q All right. And I'm looking at your notes  
12 of October 6th, 2016, which were a part of Exhibit  
13 4, and you got some measurements there. Is the  
14 point at the far left the point of rest?

15 A That's the railroad ties I think are  
16 right there.

17 Q Ah, okay. So basically what you did was  
18 you measured to the railroad ties at the downhill  
19 end of the parking area up to where the parking  
20 area ends and the grass begins; is that correct?

21 A Correct.

22 Q And you found that that was 12 feet,  
23 what, 5 inches?

24 A Approximately, yes.

25 Q And what was the slope there?



1           A     I didn't quantify the slope. We were  
2     just looking at the -- the analysis from the width  
3     and how far back we were coming.

4           Q     Did you -- so have you ever quantified  
5     the slope of the parking area?

6           A     I have not, no.

7           Q     Has anybody to your knowledge?

8           A     I don't know.

9           Q     Do you have an opinion concerning how  
10    readily the vehicle, Ms. Whitaker's vehicle would  
11    have rolled, had it been powered off and in a gear  
12    other than park?

13          A     Well, when we were there Mr. Sylvester, I  
14    think, videotaped it, didn't he? I never got a  
15    copy of his video.

16          Q     So you all did an experiment along those  
17    lines?

18          A     Yeah, we did. We did three videos,  
19    approximately 9 feet, 7 feet and 5 feet from the --  
20    from the parking of the vehicle to see how quickly  
21    it would roll.

22          Q     Okay. And Fred Sylvester videotaped  
23    that?

24          A     I believe so, it was Fred, uh-huh.

25               MR. SPENCER: James, can I get a copy of

1 that?

2 MR. LOWE: I don't think he videotaped  
3 it. I think I might have videotaped it of Fred  
4 Sylvester driving.

5 THE WITNESS: Yeah, okay.

6 MR. LOWE: But I -- I will have to look  
7 and see if I have those videos. My only way of  
8 having made them, if I did it all, would have been  
9 on my iPhone so I'm going to -- I'll check.

10 MR. SPENCER: Well, let me ask you this.  
11 I don't like getting stuff that lawyers did, just  
12 as a general rule. I think we ought to have the  
13 freedom to --

14 MR. LOWE: But I think I was the -- I  
15 think I was the videographer.

16 MR. SPENCER: Okay.

17 MR. LOWE: I'll see. I don't even know  
18 if I have them.

19 MR. SPENCER: Okay.

20 BY MR. SPENCER:

21 Q While he's looking for that I'm going to  
22 keep going.

23 Looking at Exhibit 2 --

24 MR. LOWE: I have them and I'll be happy  
25 to share them with you. You can look at them --

1 MR. SPENCER: Do you mind if I look at  
2 them?

3 MR. LOWE: -- right now.

4 MR. SPENCER: Do you mind if I look at  
5 them real quick?

6 MR. LOWE: Nope, I don't mind.

7 MR. SPENCER: Thank you.

8 MR. LOWE: I'm just that nice. Will you  
9 make sure the record reflects that.

10 MR. SPENCER: I'll stipulate that.

11 (Off the record to view videos.)

12 MR. LOWE: That's it. Those are the only  
13 two I have.

14 MR. SPENCER: If you can share those with  
15 me that will be great.

16 MR. LOWE: I can and will.

17 MR. SPENCER: I appreciate that.

18 If you can email them to me and to --  
19 Judi, right?

20 THE COURT REPORTER: Uh-huh.

21 MR. SPENCER: Thank you. I'm sorry, I  
22 have a problem with names.

23 THE COURT REPORTER: That's all right.

24 MR. SPENCER: And we'll make that our  
25 next exhibit, Exhibit 17.

1 I've written "Lowe Video" on the envelope  
2 and put a sticker on that and we'll put a thumb  
3 drive in that and mark it as Exhibit 17.

4 (Deposition Exhibit 17 marked.)

5 (Off the record discussions.)

6 MR. SPENCER: Let's go back on the  
7 record.

8 BY MR. SPENCER:

9 Q I'm showing you a photograph from the  
10 August 23, 2016, set and this is DSC\_0044. That  
11 picture was taken at the same time you all were  
12 doing the experiments that James videoed and just  
13 showed us, right?

14 A Correct.

15 Q Okay. Got it.

16 Who is that guy on the right?

17 THE WITNESS: I think that's you  
18 (indicating).

19 MR. LOWE: Yeah, that's me.

20 THE WITNESS: Yeah.

21 MR. LOWE: I'm better looking now --

22 A That's Fred right there (indicating).

23 MR. LOWE: -- then I was at the time?

24 MR. SPENCER: That's Fred so that -- I  
25 thought you -- it doesn't look like you.

1 MR. LOWE: Well...

2 MR. SPENCER: No offense, but...

3 THE WITNESS: You got good eyes if you  
4 can see that.

5 MR. SPENCER: No, I zoomed in on the  
6 digital version.

7 BY MR. SPENCER:

8 Q In the same set --

9 MR. LOWE: Well, I don't know who else it  
10 could possibly be. It was me.

11 MR. SPENCER: Okay.

12 BY MR. SPENCER:

13 Q On the same set, DSC\_0016, there's a  
14 plastic baggy and it's got dates on it of February  
15 4, 2016, and then March 4, 2016. And what happened  
16 on those two dates, if you know?

17 A I'm assuming it's something to do with  
18 Fred Sylvester because there's F something S on  
19 there. I'm assuming that's when he took custody of  
20 the keys.

21 Q Okay.

22 A The second set and put it in that bag.

23 Q What's this other thing there, the clip?

24 A I don't know. That was with him.

25 Q All right.

1 A And it's with him today at McSwain's.

2 Q All right.

3 A Or wherever it is.

4 Q If you look in the same set of photos,  
5 DSC\_0019 and 20, you took some pictures of a  
6 plastic cover that was next to the aftermarket  
7 floor mat. What is that cover for?

8 A That's the inboard cover for the seat  
9 track mount.

10 Q Inboard seat track mount? I see.

11 A On the driver's seat, yes.

12 Q Yeah, if we look at DSC\_19 we can see the  
13 outboard cover is still in place, correct?

14 A Yes, you can.

15 Q Do you know when that cover, the inboard  
16 cover was displaced?

17 A I have no idea.

18 Q You documented it just because it was  
19 there; is that right?

20 A Correct.

21 Q You haven't drawn any conclusions from  
22 that?

23 A I have not.

24 Q You don't believe that Ms. Whitaker  
25 pulled it off during the incident, do you?

1           A     I have no idea when it became dislodged  
2     from this location.

3           Q     Is it fair to say if Ms. Whitaker were  
4     paying attention and were not distracted, she would  
5     have known that the car was rolling as soon as she  
6     took the foot off the brake?

7                     MR. LOWE:  Objection, calls for  
8     speculation.

9     BY MR. SPENCER:

10          Q     If it was in neutral or drive?

11                     MR. LOWE:  Objection, calls for  
12     speculation.

13          A     Yeah, that's something really I've not  
14     been asked to study.  I don't do human factors of  
15     what people will do when distracted.

16     BY MR. SPENCER:

17          Q     Yeah.

18          A     It's not my area.

19          Q     All right.  That's fair.  Don't know till  
20     you ask.

21                     You documented some dirt on the grab  
22     handle of the driver door, as we see in the same  
23     set of photographs, photograph DSC\_0024, correct?

24          A     Yes.

25          Q     Did you draw any conclusions about when

1 that dirt was deposited there?

2 A I have not, no.

3 Q Do you know if anybody has?

4 A I don't think anybody has.

5 Q Okay. Great.

6 You also documented in the same set of  
7 photographs, No. DSC\_0036, some wear on the -- and  
8 some dirt actually on the gear shift handle,  
9 correct?

10 A Correct.

11 Q Have you drawn any conclusions about  
12 those conditions?

13 A No. I was just documenting really the  
14 condition, the wear, that kind of thing.

15 Q Have you drawn any conclusions about the  
16 dirt?

17 A No.

18 Q Same set of photographs, DSC\_0044, that  
19 was an attempt to document the slope, correct?

20 A Yeah, just to give you an overview of the  
21 area.

22 Q Right.

23 And we talked about 44.

24 I'm not going to take the time to take my  
25 tabs off unless you want me to.



1                   Okay. Thanks.

2                   I want to look at your report now which  
3 is Exhibit 1. I just have some questions about  
4 this.

5                   Are there any areas that Bill Carden is  
6 going to cover that you aren't? I guess what I'm  
7 asking is, what's the division of responsibility  
8 between you guys?

9                   A     The way I understand it, my area is the  
10 vehicle itself and its operation to a point where  
11 we get the disassembly done. And then from the  
12 disassembly onwards that would be for Bill Carden  
13 to opine to what he saw.

14                  Q     All right. So you can talk about the  
15 work you did up to which disassembly, the October  
16 '17 disassembly or the January '18 disassembly?

17                  A     It would be the disassembly at McSwain  
18 Engineering, the last one.

19                  Q     January 10 and 11 --

20                  A     Yeah.

21                  Q     -- 2018?

22                        Okay. Great. Thank you.

23                        MR. LOWE: I can just tell you that I  
24 consider Richard Clarke to be a design expert  
25 talking about the vehicle design and manufacturing

1 and I consider Bill Carden to be a materials  
2 expert.

3 MR. SPENCER: Well, I don't see any  
4 opinions in here that are critical of the design of  
5 the vehicle.

6 MR. LOWE: Right. It's a  
7 manufacturing --

8 MR. SPENCER: Okay.

9 MR. LOWE: -- issue.

10 MR. SPENCER: So the only --

11 MR. LOWE: I think he says specifically  
12 in his report that it doesn't meet the design  
13 intent.

14 MR. SPENCER: That's what I saw. Okay.

15 MR. LOWE: Yeah. So I didn't mean to  
16 interrupt you --

17 MR. SPENCER: No, no, you were --

18 MR. LOWE: -- your depo, but just to  
19 clarify what I expect --

20 MR. SPENCER: Right.

21 MR. LOWE: -- by way of division.

22 BY MR. SPENCER:

23 Q The theory at that present is that there  
24 is no design defect in this vehicle, but there is a  
25 manufacturing defect, specifically a theory that

1 the connectors were not firmly seated during  
2 assembly, correct?

3 A Correct.

4 Q Thank you. You just saved us a ton of  
5 time.

6 You say in Paragraph 2 under Findings on  
7 the second page of your report, that the subject  
8 vehicle's gear shift lever can be shifted out of  
9 park, without depressing the foot brake, et cetera.  
10 The force that is necessary to shift it out of park  
11 is documented in the strain gauge experiments at  
12 McSwain, correct?

13 A Correct. It's a force gauge, I think is  
14 what he used, wasn't it?

15 Q Right.

16 Would you agree with me that she couldn't  
17 have both left the vehicle in drive and left the  
18 vehicle in park?

19 A I would have to agree with you on that,  
20 yes.

21 Q It's one or the other?

22 A One or the other.

23 Q Is there any work underway, either by you  
24 or on your behalf, or by McSwain or on its behalf,  
25 that is not reflected in your report or McSwain's

1 report?

2 A I have not reviewed the McSwain report,  
3 but there's no work underway from my report.  
4 That's everything.

5 Q Okay. So there are no projects underway  
6 that aren't covered in your report as far as you  
7 know?

8 A Correct.

9 Q Okay. And you don't plan on doing any  
10 additional work other than perhaps selecting  
11 exhibits for trial?

12 A If we're requested to build some  
13 demonstrative exhibit we would, that's correct.

14 MR. LOWE: And I would expect obviously  
15 that they may be responding to whatever the Defense  
16 experts have to say.

17 MR. SPENCER: Sure.

18 BY MR. SPENCER:

19 Q Are you aware of any documentation of the  
20 forces necessary to overcome the BTSI other than  
21 what is documented in the photographs and video of  
22 the strain gauge experiments?

23 A I'm not.

24 Q You refer at the bottom of Page 5,  
25 Paragraph 2, to some -- it says "gauges," but you

1 you mean gouges from a prior electrical  
2 examination. Are you referring to the gouges on  
3 the female connector's blades that were caused by  
4 Mr. Cooper's probes?

5 A Yes.

6 Q All right. And you document: The male  
7 portion of the subject vehicle's electrical  
8 connector revealed contact marks, this is  
9 consistent with engagement with the female portion.  
10 Correct?

11 A Correct.

12 Q But how much engagement, you leave that  
13 to Mr. Carden, correct?

14 A That is correct.

15 Q When you say that the subject vehicle  
16 violates Federal Motor Vehicle Safety Standards 102  
17 and 114 in Paragraph 7 of the Opinion section of  
18 your report, Exhibit 1, in what way does it -- does  
19 the vehicle in its current condition violate those  
20 standards?

21 A So 102(S3.1.3) is starter interlock. The  
22 engine starter shall be inoperative when the  
23 transmission shift lever is in a forward or reverse  
24 drive position. That's basically from 102.

25 Q Let me just stop you right there.

1           And the vehicle as designed complies with  
2   that provision and with 102, correct?

3           A     Yes.

4           Q     All right. Now, let's go to 114.

5           A     114 also specifies requirements to reduce  
6   the incidence of crash resulting from a rollaway of  
7   a parked vehicle.

8           Q     And that's the BTSI standard?

9           A     Correct.

10          Q     B-T-S-I?

11          A     Correct.

12          Q     And the vehicle as it sits right now does  
13   not comply with that standard, but as originally  
14   designed and manufactured it did?

15               MR. LOWE: Objection.

16          A     I'm assuming that this wasn't broke  
17   during manufacturing.

18          Q     Right.

19          A     So I'm sure the one vehicle that was  
20   tested or how many were tested for that particular  
21   standard passed.

22          Q     All right.

23          A     And then same on the 14, the --

24               MR. LOWE: 114.

25          A     114, sorry, it's S4.2, in each vehicle

1 which has an automatic transmission with a park  
2 position shall when tested under the procedure  
3 prevent removal of the key unless the transmission  
4 or transmission shift lever is in the park or  
5 becomes locked in park.

6 BY MR. SPENCER:

7 Q But again, the vehicle as designed and  
8 manufactured met the standard?

9 MR. LOWE: Objection, you talking about  
10 the subject vehicle?

11 MR. SPENCER: Well, yeah.

12 MR. LOWE: Well, there's a difference  
13 between design and manufacture in this case. I  
14 don't know if that's intended to be misleading or  
15 not.

16 MR. SPENCER: No, no, but for purposes of  
17 this case and for purposes of 114, as it was  
18 originally designed and manufactured it complied.

19 MR. LOWE: Are you talking about the  
20 subject vehicle or the subject vehicle design --

21 MR. SPENCER: I'm talking about --

22 MR. LOWE: -- the model design?

23 MR. SPENCER: I'm talking about both.

24 And let me be specific. I'm not trying to be  
25 tricky here.

1 MR. LOWE: Okay.

2

3 BY MR. SPENCER:

4 Q It's my understanding that the only  
5 manufacturing defect that you all have identified  
6 as part of your present theory is the failure to  
7 firmly seat the connector in the wiring harness  
8 between the parking position switch on the one hand  
9 and the ignition cylinder on the other hand?

10 A Correct.

11 Q All right. That covers it.

12 MR. LOWE: Okay. Thank you.

13 MR. SPENCER: Thank you. I didn't -- I'm  
14 sorry if I caused any confusion.

15 MR. LOWE: It may have just been my own.

16 A And then I've got, I guess, it's Section  
17 S4.2.1.

18 BY MR. SPENCER:

19 Q Uh-huh.

20 A Each vehicle specified therein may have a  
21 device which when activated permits movement or  
22 moving park after the removal of the key.

23 And obviously that's the device where you  
24 lift up the cover and push down on the BTSI to  
25 remove that part.



1 Q Yeah, it's the BTSI override feature that  
2 you document in some of your photographs I think.

3 Okay. Going through your bills, you have  
4 an entry for October 6, 2016, for you performing a  
5 video demonstration of the subject vehicle. Are  
6 those the videos that we looked at?

7 A I think so, yes.

8 Q And those would be Exhibit 2, I think.

9 Okay. That's the only video  
10 demonstration that you personally performed?

11 A Correct.

12 Q On that day?

13 A Yes.

14 Q All right.

15 A That was on the preliminary inspection.

16 Q Right.

17 Who is Marlo, M-A-R-L-O, Crawl.

18 C-R-A-W-L?

19 MR. LOWE: It's Milo, M-I-L-O.

20 MR. SPENCER: Well, it's spelled  
21 M-A-R-L-O.

22 A It's -- I spelled it wrong or Emily did  
23 when she entered it into the time section.

24 BY MR. SPENCER:

25 Q Well, who is Milo Crawl?

1           A     He was an employee of McSwain  
2     Engineering.

3           Q     It sounds like a heavy metal rocker. No  
4     offense, but...

5                     MR. LOWE: None taken.

6     BY MR. SPENCER:

7           Q     You picked up some exemplar parts from  
8     Buckingham Automotive on October 23, 2017,  
9     according to your bill. What were those parts?

10          A     It would be exemplar steering columns.

11          Q     All right.

12          A     Or exemplar column, not S, just one.

13                     MR. SPENCER: All right. Let's take a  
14     break.

15                     (Recess taken 11:13 a.m.)

16                     MR. SPENCER: Let's go back on the  
17     record.

18                     All right. That's all the questions I  
19     have.

20                     James, do you have any?

21                     MR. LOWE: Yeah, I have two. I hope just  
22     two.

23

24

25

1 EXAMINATION

2 BY MR. LOWE:

3 Q Mr. Clarke, I just wanted to ask you  
4 about some of the things you've testified to with  
5 respect to whether or not you hold certain  
6 opinions.

7 First of all, do you have an opinion to a  
8 reasonable engineering and scientific certainty  
9 that the theory that you discussed with Mr. Spencer  
10 regarding the manufacturing defect which was the  
11 failure to fully connect the solenoid connector, is  
12 it your opinion that that defect existed at the  
13 time of the manufacture of the Whitaker vehicle?

14 A Yes.

15 Q Do you also have an opinion to a  
16 reasonable engineering and scientific certainty,  
17 with respect to what would be the effect of a fully  
18 engaged -- let me rephrase that.

19 Do you have an opinion to a reasonable  
20 engineering and scientific certainty as to whether  
21 or not if the solenoid connector had been fully  
22 engaged as designed, it would be subject to  
23 inadvertent disengagement?

24 A It would be unable to inadvertently  
25 disengage it.

1 Q Okay. And why is that?

2 A Because you have to purposely push down  
3 on the locking tab at the same time as you're  
4 pulling it apart.

5 Q All right. So if it were fully engaged  
6 at the time of the installation of the aftermarket  
7 radio and microphone, unless someone intentionally  
8 pushed down on the tab to remove it, to remove the  
9 connector, do you have an opinion to a reasonable  
10 engineering and scientific certainty as to whether  
11 or not it would otherwise be inadvertently  
12 disengaged in that process?

13 A You couldn't inadvertently disengage it.

14 Q Do you have an opinion to a reasonable  
15 engineering and scientific certainty as to whether  
16 or not in the installation of an aftermarket radio  
17 and microphone, it would be necessary or desirable  
18 to disengage that solenoid connector for any reason  
19 in order to facilitate the wiring of those  
20 aftermarket parts?

21 A I don't see any reason why it would need  
22 to be disconnecting that for any reason.

23 MR. LOWE: Thank you. That's all the  
24 questions I have.

25

1 FURTHER EXAMINATION

2 BY MR. SPENCER:

3 Q Was the technician who put in the  
4 aftermarket radio hung over? Serious question?

5 A I have no idea.

6 Q Was he on drugs?

7 MR. LOWE: Objection, speculation.

8 A I have no idea.

9 BY MR. SPENCER:

10 Q Was he intoxicated?

11 A I have no idea.

12 Q How much sleep had he gotten the night  
13 before?

14 A I don't know.

15 MR. LOWE: Objection.

16 BY MR. SPENCER:

17 Q Do you know whether it was a him or a  
18 her?

19 A I do not.

20 Q Do you know what level of experience that  
21 person had?

22 MR. LOWE: Objection.

23 A No idea.

24 BY MR. SPENCER:

25 Q Okay. Great.

1 MR. SPENCER: I have no further  
2 questions.

3 MR. LOWE: Neither do I.

4 MR. SPENCER: You want to read it.

5 MR. LOWE: Yes, he'll read it.

6 THE WITNESS: Yes, read and sign, I did  
7 that at the beginning.

8 MR. SPENCER: All right. So let's make  
9 sure we're good.

10 You're going to take Exhibits 1, 2 and 3.

11 James is going to somehow get the videos,  
12 Exhibit 17, to you and to the rest of us.

13 Richard Clarke is going to have the other  
14 exhibits either scanned in color or copied in color  
15 and sent to all three of us, the court reporter,  
16 James and me, right?

17 THE WITNESS: Correct.

18 MR. SPENCER: Anything else we need to  
19 talk about?

20 I want to order a copy expedited and  
21 he'll want the same thing. And if you can have the  
22 exhibits as well that would be great. And I'd like  
23 an e-tran. I don't need a PDF. But I do need the  
24 original in a sealed envelope as well with the  
25 exhibits as well, okay?

1 I ordered it expedited and asked for an  
2 e-tran and all of that.

3 MR. LOWE: I would request the same.

4 MR. SPENCER: I figured you would. I  
5 already told her that.

6 (Deposition concluded at 11:18 a.m.)

7 (Signature requested reserved.)

8

9 \* \* \* \* \*

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1 The following reporter and firm  
disclosures were presented by me at this proceeding  
2 for review by counsel:

REPORTER DISCLOSURES

3 The following representations and  
disclosures are made in compliance with Georgia  
4 Law, more specifically:

Article 10 (B) of the Rules and  
5 Regulations of the Board of Court Reporting  
(disclosure forms).

6 OCGA Sections 9-11-28 (c)  
(disqualification of reporter for financial  
7 interest).

8 OCGA Sections 15-14-37 (a) and (b)  
(prohibitions against contracts except on a  
case-by-case basis).

9 - I am a certified court reporter in the state of  
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10 - I am a subcontractor for Veritext.

11 - I have been assigned to make a complete and  
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12 - I have no relationship of interest in the matter  
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13 maintaining my obligation of impartiality in  
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14 - I have no direct contract with any party in this  
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15 the terms of my subcontractor agreement.

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16 - Veritext was contacted to provide reporting  
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17 matter.

18 - There is no agreement in place that is prohibited  
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discounts are automatically applied to all parties,  
19 at such time as any party receives a discount.

20 - Transcripts: The transcript of this proceeding  
as produced will be a true, correct, and complete  
record of the colloquies, questions, and answers as  
21 submitted by the certified court reporter.

22 - Exhibits: No changes will be made to the  
exhibits as submitted by the reporter, attorneys,  
or witnesses.

23 - Password-Protected Access: Transcripts and  
exhibits relating to this proceeding will be  
24 uploaded to a password-protected repository, to  
which all ordering parties will have access.  
25



C E R T I F I C A T E

Deposition of: Richard A. Clarke

Date of Deposition: February 1, 2018

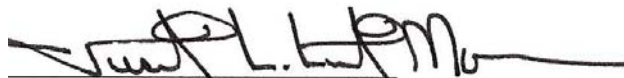
STATE OF GEORGIA:

COUNTY OF HALL:

I hereby certify that the foregoing transcript was stenographically recorded by me as stated in the caption. The deponent was duly sworn to tell the truth, the whole truth, and nothing but the truth. And the colloquies, statements, questions and answers thereto were reduced to typewriting under my direction and supervision and the deposition is a true and correct record, to the best of my ability, of the testimony/evidence given by the deponent.

I further certify that I am not a relative or employee or attorney or counsel to any of the parties in the case, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in the action.

This, the 5th day of February 2018.



Judith L. Leitz Moran, CCR-B-2312  
Registered Professional Reporter

FIRM CERTIFICATE AND DISCLOSURE

Veritext represents that the foregoing transcript as produced by our Production Coordinators, Georgia Certified Notaries, is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the certified court reporter in this case. Veritext further represents that the attached exhibits, if any, are a true, correct and complete copy as submitted by the certified reporter, attorneys or witness in this case; and that the exhibits were handled and produced exclusively through our Production Coordinators, Georgia Certified Notaries. Copies of notarized production certificates related to this proceeding are avail- able upon request to

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ERRATA SHEET  
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ASSIGNMENT NO. CS2797478

CASE NAME: Whitaker, Clarence Edward v. Hyundai Motor Company

DATE OF DEPOSITION: 2/1/2018

WITNESS' NAME: Richard A Clarke

[illegible]

Richard A Clarke

(Notary not required in California)

SUBSCRIBED AND SWORN TO

BEFORE ME THIS DAY

OF \_\_\_\_\_, 2018.

NOTARY PUBLIC

MY COMMISSION EXPIRES

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\_\_\_\_\_, 2018

Richard A. Clarke

Case Name: Whitaker, Clarence Edward v. Hyundai Motor Company

Veritext Reference Number: 2797478

Witness: Richard A Clarke Deposition Date: 2/1/2018

Dear Sir/Madam:

Enclosed you will find a transcript of your deposition.

As the reading and signing have not been expressly  
waived, please review the transcript and note any  
changes or corrections on the jurat/errata sheet  
included, indicating the page, line number, change and  
reason for the change. Sign at the bottom of the sheet  
in the presence of a notary except in California where  
you are signing under penalty of perjury and forward  
the errata sheet back to us at the address shown above.

If the jurat is not returned within thirty days of your receipt of  
this letter, the reading and signing will be deemed waived.

Sincerely,

Production Department

Encl.

cc: Christina M. Dwyer, Esq.

James A. Lowe, Esq.

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[&amp; - 5th]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.



VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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